

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 JENNIFER GARNICA, an individual,
12 Plaintiff,
13 v.

14
15 COUNTY OF LOS ANGELES, a public entity; DIANA LARA, an Individual; VERONICA TORREZ, an Individual; REBECCA CASILLAS, an Individual; SHANNA HOPE RAMPLEY, an Individual; VASONNE MCDONALD, an Individual; CATHERINE VUKSANOVIC, an Individual; STEPHANIE ASATRYAN, an Individual; PORCHE HILL, an Individual; SHANNON MORRIS, an Individual; LAN FONTES, an Individual; LAURA ISABEL GUERRERO, an Individual; ALDO MARIN, an Individual; EDWARD FITHYAN, an Individual; GABRIELLA VILLAGOMES, an Individual; PADRIS BAKHESHI, an Individual, DEBORAH RAMIREZ, an Individual, TIM MCTIGHE, an Individual; BOBBY CAGLE, an Individual; AND DOES 1 through 100, inclusive,

25 Defendants.

26 Case No.: 2:22-cv-06900-MEMF-BFM

27
28 **ORDER GRANTING GUERRERO'S REQUEST FOR JUDICIAL NOTICE, DENYING BAKHESHI'S REQUEST FOR JUDICIAL NOTICE, GRANTING IN PART COUNTY DEFENDANTS' MOTION TO DISMISS, GRANTING GUERRERO'S MOTION TO DISMISS, AND GRANTING BAKHESHI'S MOTION TO DISMISS [ECF NOS. 9, 24, 40]**

Before the Court are three Motions to Dismiss, filed by (1) Defendants County of Los Angeles, Diana Lara, Veronica Torrez, Rebecca Casillas, Shanna Rampley, Vasonne McDonald, Catherine Vuksanovic, Stephanie Asatryan, Porsha Hill, Shannon Morris, Lan Fontes, Deborah Ramirez, Aldo Marin, Edward Fithyan, and Tim S. McTighe (collectively, the “County Defendants”) (ECF No. 9); (2) Defendant Laura Guerrero (ECF No. 24); and (3) Defendant Padris Bakheshi (ECF No. 40). Also before the Court are a Request for Judicial Notice filed by Defendant Laura Guerrero (ECF No. 24-2) and a Request for Judicial Notice filed by Defendant Padris Bakheshi (ECF No. 40-3).

For the reasons stated herein, the Court GRANTS Laura Guerrero's Request for Judicial Notice (ECF No. 24-2), DENIES Padris Bakheshi's Request for Judicial Notice (ECF No. 40-3), GRANTS IN PART the County Defendants' Motion to Dismiss (ECF No. 9), GRANTS Laura Guerrero's Motions to Dismiss (ECF No. 24), and GRANTS Padris Bakheshi's Motion to Dismiss (ECF No. 40).

BACKGROUND

I. Factual Background¹

Plaintiff Jennifer Garnica (“Garnica”) is an individual residing in Los Angeles County, California. Compl. ¶ 1.

Defendant County of Los Angeles (the “County”) is a public entity. *Id.* ¶ 5. One subdivision of the County is the Los Angeles County Department of Children and Family Services (“DCFS”).

Defendants Diana Lara (“Lara”), Veronica Torrez (“Torrez”), Rebecca Casillas (“Casillas”) Shanna Hope Rampley (“Rampley”), Vosonne McDonald (“McDonald”), Catherine Vuksanovic (“Vuksanovic”), Stephanie Asatryan (“Asatryan”), Porsche Hill (“Hill”), Shannon Morris

¹ The factual allegations included in this section are taken from Plaintiff Jennifer Garnica's Complaint. ECF No. 1-1 ("Complaint" or "Compl."). For the purposes of this Order, the Court treats these factual allegations as true, but at this stage of the litigation, the Court makes no finding on the truth of these allegations and is therefore not—at this stage—finding that they are true.

1 (“Morris”), Laura Isabel Guerrero² (“Guerrero”), Aldo Marin (“Marin”), Edward Fithyan
 2 (“Fithyan”), Gabriella Villagomes (“Villagomes”), Tracy Bracken (“Bracken”), Padris Bakheshi³
 3 (“Bakheshi”), Deborah Ramirez (“Ramirez”), Lan Fontes (“Fontes”), Tim McTighe (“McTighe”),
 4 and Bobby Cagle⁴ (“Cagle”) are individuals, and are officers, agents, or employees of DCFS. *Id.* ¶¶
 5 6–24.

6 Garnica’s daughter, PRG, was born in 2014. *Id.* ¶ 29. PRG’s father is Jack Zeichick
 7 (“Zeichick”). *Id.* Garnica had primary custody of PRG from the time of PRG’s birth until May 2016.
 8 *Id.*

9 DCFS began investigating PRG’s home life in 2016 based on allegations of domestic
 10 violence and allegations that Zeichick was involved with drugs. *Id.* ¶ 31. A court issued a criminal
 11 protective order (“CPO”) against Zeichick. *Id.* ¶ 33. During a monitored visit on August 22, 2018, in
 12 the presence of monitor Tashana McSwain, PRG made allegations that Zeichick possessed guns and
 13 intended to harm Garnica. *Id.* ¶ 34. Garnica reported to Defendant Lara that Zeichick had violated
 14 the CPO, and Lara was “peculiarly aggressive and haughty” to Garnica. *Id.* Garnica contacted a
 15 prosecutor regarding these issues. *Id.*

16 On September 10, 2018, a court heard argument and ordered that custody of PRG be given to
 17 Garnica. *Id.* ¶ 32. On September 13, 2018, a court held an emergency bail hearing regarding
 18
 19
 20
 21

22 ² Guerrero asserts that she is not an employee of the County and is rather an employee of Children’s Law
 23 Center of California. *See* ECF No. 63 at 8 (“Defendant Guerrero at all relevant times was an attorney
 24 employed by the Children’s Law Center of California”). At this stage, the Court must treat Garnica’s
 25 plausible allegations as true, including the allegation that Guerrero was employed by the County. *See* Compl.
 ¶ 15.

26 ³ The case caption on the Court’s filing system refers to Bakheshi as “Brakheshi.” Both Garnica and Bakheshi
 27 use Bakheshi rather than Brakheshi, and so the Court will do the same. *See* ECF No. 1-1 (Complaint against
 28 Padris Bakheshi); ECF No. 40 (Motion to Dismiss filed by Padris Bakheshi).

⁴ There is no indication on the docket that Garnica ever served process on Defendants Villagomes, Bracken,
 and Cagle. These three have not filed any responsive pleadings, and this Order does not address whether
 Garnica stated a claim against them. The Court has separately issued an Order regarding the status of these
 Defendants. ECF No. 66.

1 Ziechick's alleged violation of the CPO. *Id.* ¶ 34. Lara "discredited PRG reporting about the guns"
 2 and the court denied bail because of Lara's testimony.⁵ *Id.*

3 On December 14, 2018, a further custody proceeding was held. *Id.* ¶ 36. Lara testified against
 4 Garnica. *Id.* An audio recording of an interview Lara conducted of PRG was played in court, which
 5 included statements from PRG that Ziechick injured PRG. *Id.* Lara asked PRG whether Garnica had
 6 coached her, and PRG corrected Lara and denied this. *Id.* PRG was approximately four years old at
 7 the time. *See Compl.* Garnica filed a police report against Lara shortly thereafter. *Id.* ¶ 37.

8 On April 25, 2019, Ziechick abducted PRG and announced on social media that he would
 9 take PRG to foster care. *Id.* ¶ 38. Ziechick accused Garnica of being abusive. *Id.* Garnica reported
 10 the abduction to the Redondo Beach police. *Id.*

11 On May 3, 2019, Casillas interviewed PRG. *Id.* ¶ 39. Garnica was suspicious of Casillas, in
 12 light of the interactions with Lara, and caused the interview to be recorded without PRG's or
 13 Casillas's knowledge. *Id.* PRG stated in the interview that Ziechick had guns, and despite prompting
 14 from Casillas, PRG did not indicate that Garnica had ever coached her. *Id.* On May 14, 2019, Los
 15 Angeles Police Department Officers interviewed PRG, and PRG reported abuse by Ziechick. *Id.* ¶
 16 40. Casillas accused Garnica of coaching PRG. *Id.*

17 On September 19, 2019, an employee of PRG's school told PRG that Ziechick would pick
 18 PRG up from school. *Id.* ¶ 41. PRG became frightened and told the employee that the last time PRG
 19 was with Ziechick, Ziechick abused PRG. *Id.* The employee called the authorities.

20 On September 24, 2019, Torrez closed the investigation into Ziechick with the disposition
 21 "Inconclusive for Allegations of Sexual Abuse for father" despite all witnesses except Ziechick
 22 having given testimony supporting abuse. *Id.* ¶ 42. The next day, on September 25, 2019, Torrez
 23 called Garnica and informed Garnica that "everyone in [Torrez's] office" "agrees" that Garnica had
 24 coached PRG. *Id.* ¶ 43.

25
 26
 27 ⁵ It is unclear to the Court what was intended by this allegation. Although the Complaint states that "bail was
 28 denied,"—which would mean that Ziechick was not permitted to be released—the context suggests that
 Garnica is alleging the opposite, namely that Ziechick was either released or not prosecuted due to Lara's
 allegedly false testimony.

1 On October 25, 2019, at Torrez’s instruction, forensic interviewer Jennifer Dineen
 2 interviewed PRG. *Id.* ¶ 44. PRG again made allegations of abuse by Zeichick, including that
 3 Zeichick “hurt my private,” that Zeichick “hits me a lot,” and that PRG had been shown
 4 pornography. *Id.* The interview was video recorder. *Id.* Torrez later misrepresented what occurred in
 5 this interview, and falsely claimed that Garnica had refused to take PRG to the forensic interview.
 6 *Id.* Others, including the same employee from PRG’s school, made statements and wrote letters
 7 supporting PRG’s allegations of abuse. *Id.*

8 On July 20, 2020, a further custody hearing was held. *Id.* ¶ 47. McDonald interviewed PRG,
 9 who again reported abuse by Zeichick. *Id.* PRG’s babysitter also reported abuse to McDonald. *Id.*
 10 McDonald wrote a report indicating that no suitable guardian was available for PRG, even though
 11 PRG’s grandfather called McDonald to offer himself as a guardian and Garnica and Garnica’s fiance
 12 Frank Ryan (“Ryan”) were available. *Id.* At the hearing, the attorneys for the state were in
 13 communication with McTighe, who relayed accusations of coaching from the others. *Id.* The
 14 attorneys for the state relied on DCFS and did not do their own investigation. *Id.* The court ordered
 15 that PRG not be released to Zeichick and released PRG to foster care. *Id.*

16 On July 22, 2020, McDonald interviewed foster mother Vera Mallet (“Mallet”). *Id.* ¶ 48.
 17 McDonald falsely reported Mallet’s words and indicated that Mallet had said Garnica coached PRG.
 18 *Id.* Garnica’s attorney interviewed Mallet, who confirmed that McDonald had lied, and also stated
 19 that PRG was terrified of Zeichick. *Id.*

20 On July 23, 2020, a family court judge removed PRG from the CPO against Zeichick. *Id.* ¶
 21 49. The Defendants caused this to occur and did not notify Garnica of the hearing. *Id.*

22 On August 1, 2020, Garnica informed supervisors Morris, Guerrero, McTighe, Fithyan, and
 23 Cagle via several emails of the other Defendants’ behavior. *Id.* ¶ 51.

24 In August of 2020, several third parties including PRG’s therapist informed Defendants of
 25 PRG’s allegations of abuse by Zeichick. *Id.* ¶¶ 52, 53. Defendants omitted this information from
 26 their reports. *Id.* ¶ 53. In an August 21, 2020, hearing, a district attorney stated that “All DCFS
 27 doesn’t want [Garnica] to have visitation.” *Id.* ¶ 54.

1 In or around late August 2020, Morris, Rampley, Vuksanovic, Asatryan, Hill, McDonald,
 2 and others subjected PRG to medical procedures without court authorization or consent. *Id.* ¶ 55.
 3 These medical procedures included genitourinary examinations, taking urine samples, and
 4 vaccinations. *See id.* ¶¶ 90, 140(i). Garnica was not informed of these procedures. *Id.*

5 In October 2020, Fontes, Asatryan, Vuksanovic, and Morris were assigned to reinvestigate
 6 PRG’s situation. *Id.* ¶ 56. Rather than conduct a neutral reinvestigation as required, they simply
 7 copied and pasted the false statements previously made by Lara, Casillas, and Torrez. *Id.* ¶ 57. While
 8 doing so, Fontes, Asatryan, Vuksanovic, and Morris communicated with Lara, Casillas, and Torrez.
 9 *Id.* Fontes, Asatryan, Vuksanovic, and Morris filed their report on November 30, 2020, and included
 10 the false statements made by Lara, Casillas, and Torrez, and also added other statements that they
 11 knew to be false. *Id.* ¶ 58.

12 On November 8, 2020, a court awarded Zeichick custody of PRG. *Id.* ¶ 62. Defendants
 13 recommended that Garnica receive no parental rights and no visitation rights. *Id.* The court ordered
 14 that Garnica receive only monitored visits. *Id.* Garnica appealed the decision. *Id.* As of the filing of
 15 the Complaint, that appeal was pending. *See id.*

16 In a December 16, 2020, hearing, Bakheshi represented Zeichick. *Id.* ¶ 59. Bakheshi delayed
 17 the trial and caused Garnica to lose money and lose her rights to PRG. *Id.*

18 In April 2021, Dr. Lynn Steinberg (“Steinberg”) conducted monitored visitations with PRG.
 19 *Id.* ¶ 60. Steinberg reported that Rampley and Vuksanovic were aggressive to Steinberg, and that
 20 they pressured Steinberg not to bring up the subject of abuse. *Id.* Steinberg wrote a letter regarding
 21 these issues. *Id.* Rampley and Vuksanovic informed Steinberg that they had ultimate authority and
 22 canceled Steinberg’s visits. *Id.*

23 On May 11, 2021, Garnica spoke to PRG for the first time in eleven months. *Id.* ¶ 61.
 24 Rampley and Asatryan falsified documents to ensure PRG was removed from Garnica. *Id.* Among
 25 other falsifications, Rampley and Asatryan stated that they were Licensed Social Workers, when in
 26 fact they were not. *Id.*

27 None of the Defendants have been disciplined by the County for their actions. *Id.* ¶ 63. As a
 28 matter of custom and practice, Defendants’ behavior is deliberately left unaddressed by DCFS. *Id.*

1 DCFS workers regularly make false statements in juvenile court. *Id.* ¶ 112. The County regularly
 2 receives complaints about this conduct, and never investigates or disciplines its social workers. *Id.* ¶¶
 3 114, 115. DCFS workers also regularly request that medical procedures be performed on children
 4 without their parents present. *Id.* ¶ 137. DCFS fails to train its employees on the constitutional rights
 5 of children and parents. *Id.* ¶ 144.

6 **II. Procedural History**

7 Garnica filed suit in Los Angeles County Superior Court on July 19, 2022. *See* ECF No. 1.
 8 Garnica brings six causes of action: (1) a 42 U.S.C. § 1983 (“Section 1983”) claim for violations of
 9 the Fourteenth Amendment and the right to familial association, based on deception in presentation
 10 of evidence and unwarranted seizure of a child, against all Defendants (*see* Compl. ¶¶ 65–73); (2) a
 11 Section 1983 claim for retaliation in violation of the First Amendment and violations of the right to
 12 familial association against Lara, Casillas, Torrez, Rampley, Asatryan, Vuksanovic, Fontes, Hill,
 13 Morris, and Guerrero (*see* Compl. ¶¶ 74–86); (3) a claim for deprivation of constitutional rights
 14 based on non-consensual and unwarranted medical examinations against Lara, Casillas, Torrez,
 15 Rampley, Asatryan, Vuksanovic, Fontes, Hill, Morris, and Guerrero (*see* Compl. ¶¶ 87–95); (4) a
 16 Section 1983 claim for violation of civil rights based on deception in presentation of evidence and
 17 unwarranted seizure of a child against all Defendants (*see* Compl. ¶¶ 96–104); (5) a Section 1983
 18 claim and *Monell* claim for a custom and practice of deception in the presentation of evidence and
 19 retaliation by DCFS social workers against the County (including separate “counts” for “Judicia
 20 Deception,” “Unwarranted Medical Examinations,” and “Unwarranted Seizure”) (*see* Compl. ¶¶
 21 105–158); and (6) a California Civil Code § 52.1 (“Bane Act”) claim against all Defendants⁶ (*see*
 22 Compl. ¶¶ 159–160). Garnica filed her complaint *pro se*. *See id.* Defendants removed the action to
 23 this Court on September 23, 2022. ECF No. 1.

24 On September 30, 2022, the County, Lara, Torrez, Casillas, Rampley, McDonald,
 25 Vuksanovic, Asatryan, Hill, Morris, Fontes, Ramirez, Marin, Fithyan, and McTighe (collectively the
 26

27 ⁶ The heading for the sixth cause of action states that is brought against “All Defendants,” but also states it is
 28 brought against “County of Los Angeles and DOES 1 – 30” and not other Defendants. *See* Compl. at p. 39.
 As discussed in more detail below, this claim will be dismissed under either reading.

1 “County Defendants”) filed a Motion to Dismiss. ECF No. 9 (“County Motion” or “County Mot.”).
 2 On December 12, 2022, Guerrero filed a Motion to Dismiss, along with a Request for Judicial
 3 Notice. ECF No. 24 (“Guerrero Motion” or “Guerrero Mot.”); ECF No. 24-2 (“Guerrero Request for
 4 Judicial Notice” or “Guerrero RJD”). On February 6, 2023, Bakheshi filed a Motion to Dismiss,
 5 along with a Memorandum of Points and Authorities and a Request for Judicial Notice. ECF No. 40
 6 (“Bakheshi Motion” or “Bakheshi Mot.”); ECF No. 40-1 (“Bakheshi MPA”); ECF No. 40-3
 7 (“Bakheshi Request for Judicial Notice” or “Bakheshi RJD”).

8 On March 20, 2023, Garnica requested a stay of the case and an extension of time to respond
 9 to the Motions, noting that she had found attorneys to represent her, but the attorneys needed time to
 10 respond. ECF No. 50. On March 30, 2023, the Court denied Garnica’s request for a stay, but granted
 11 Garnica until May 28, 2023, to respond to the Motions. ECF No. 52. The Court explained that
 12 Garnica could file one consolidated opposition if she chose. *Id.*

13 On May 26, 2023, Garnica filed an Opposition to the three Motions with the assistance of
 14 counsel. ECF No. 55 (“Opp’n”). On June 8, 2023, the County Defendants filed a Reply in support of
 15 their Motion. ECF No. 59 (“County Reply”). Also on June 8, 2023, Bakheshi filed a Reply in
 16 support of her Motion. ECF No. 58 (“Bakheshi Reply”). On June 9, 2023, Guerrero filed a Reply in
 17 support of her Motion. ECF No. 63 (“Guerrero Reply”).

18 The Court held a hearing on the Motions on October 5, 2023.

19 **REQUESTS FOR JUDICIAL NOTICE (ECF NOS. 24-2, 40-3)**

20 **I. Applicable Law**

21 A court may judicially notice facts that: “(1) [are] generally known within the trial court’s
 22 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy
 23 cannot reasonably be questioned.” Fed. R. Evid. 201(b). Under this standard, courts may judicially
 24 notice “undisputed matters of public record,” but generally may not notice “disputed facts stated in
 25 public records.” *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001), overruled on other
 26 grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th Cir. 2002). Once a
 27 fact is judicially noticed, the court “must instruct the jury to accept the noticed fact as conclusive.”
 28 Fed. R. Evid. 201(f).

1 On a motion to dismiss, courts are generally prohibited from “consider[ing] any material
 2 beyond the pleadings.” *United States v. Corinthian Colleges*, 655 F.3d 984, 998 (9th Cir. 2011)
 3 (quoting *Lee*, 250 F.3d at 688). Courts generally only consider the complaint and other materials
 4 “submitted with and attached to the Complaint.” *Id.* at 999. Documents not attached to the
 5 complaint—including documents that might otherwise be subject to judicial notice—may only be
 6 considered if: “(1) the complaint refers to the document; (2) the document is central to the plaintiff’s
 7 claim; and (3) no party questions the authenticity of the document.” *Id.* (citing *Marder v. Lopez*, 450
 8 F.3d 445, 448 (9th Cir.2006)). However, in considering preclusion on a motion to dismiss, courts
 9 may take judicial notice of court records “to determine what issues were actually litigated” in
 10 previous actions, regardless of whether the court records meet the *Corinthian Colleges* test described
 11 above. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *see also*
 12 *Manufactured Home Cmtys. Inc. v. City of San Jose*, 420 F.3d 1022, 1037 (9th Cir. 2005) (court
 13 considering motion to dismiss took judicial note of court documents from state court litigation which
 14 were “helpful in considering matters related to preclusion in the state courts”).

15 A court considering a motion to dismiss should not take judicial notice of material that
 16 cannot be considered for the motion. *See Lee*, 250 F.3d at 689–90.

17 **II. Discussion**

18 **A. Guerrero’s Request for Judicial Notice is granted (ECF No. 24-2).**

19 Guerrero requests that the Court take notice of a decision of the California Court of Appeal in
 20 *In re: Paris G.*, appellate case number B313465. *See* Guerrero R.J.N. This appears to be Garnica’s
 21 appeal of the custody decision issued on November 8, 2020. *See* Compl. ¶ 62 (“[Garnica] has filed
 22 an Appeal regarding the Juvenile Courts [sic.] decision Appeal Case No. B313465.”). Guerrero
 23 seeks to use this document to argue for issue preclusion. *See* Guerrero Mot. at 8 (“Additionally, the
 24 issues raised in the Complaint . . . are subject to issue preclusion, as they have already been
 25 adjudicated against Garnica in a decision of the California Court of Appeal on November 15, 2022,
 26 in *In re: Paris G.*, California Court of Appeal, Second District, Case No.: B313465.”)

27 Because this document is a public record, which can be verified from sources whose
 28 accuracy cannot be questioned, it is appropriate for judicial notice. *See* Fed. R. Evid. 201(b). And

1 because the document will be used to determine whether preclusion applies, there is no rule against
 2 considering the document while deciding a motion to dismiss. *See Reyn's Pasta Bella*, 442 F.3d at
 3 746 n.6.

4 Accordingly, Guerrero's Request for Judicial Notice is GRANTED. The Court will take
 5 notice of the existence of this document and will take notice of the fact that the California Court of
 6 Appeal made the decision stated therein.⁷ But the Court will not take notice of any disputed facts
 7 within the document.

8 **B. Bakheshi's Request for Judicial Notice is denied (ECF No. 40-3).**

9 Bakheshi requests that the Court take notice of a Minute Order appointing Bakheshi as
 10 counsel for "Father" in a case involving Garnica. *See* Bakheshi RJN. The document is heavily
 11 redacted—from the version of the document submitted, it is not clear what the "Father['s]" name is,
 12 or whether the case is related to PRG as opposed to some other child. *See id.*

13 This document is not referenced in the Complaint. *See* Compl. Although the fact that
 14 Bakheshi represented Zeichick is referenced in the Complaint, the fact that Bakheshi was appointed
 15 by a court is not stated in the Complaint. *See id.* ¶ 59. Because this document is not referenced in the
 16 Complaint or central to the Complaint, it would not be appropriate to consider this document in
 17 deciding a motion to dismiss. *See Corinthian Colleges*, 655 F.3d at 998. Because the document
 18 cannot be considered, the Court will not take judicial notice of the document at this stage. *See Lee*,
 19 250 F.3d at 689–90.

20 Unlike Guerrero, Bakheshi does not argue that this document should be used to show
 21 preclusion. Although Bakheshi argues that litigation privilege "precludes" this lawsuit, she does not
 22 raise issue preclusion, or otherwise argue that the "issues were actually litigated" previously. *See*
 23 Bakheshi MPA at 5; *Reyn's Pasta Bella*, 442 F.3d at 746 n.6. Rather, Bakheshi uses preclusion in its
 24 broader sense to mean that claims are *barred* as a matter of law. Accordingly, the way Bakheshi
 25
 26

27
 28 ⁷ As discussed in more detail below, the Court did not reach Guerrero's preclusion argument and therefore did
 not consider this document in reaching its decision.

1 seeks to use this document does not fall within the exception to *Corinthian Colleges* for court
 2 records that will be used to show preclusion based on prior litigation. *See id.*

3 Bakheshi's Request for Judicial Notice is DENIED. This denial is without prejudice as to
 4 Bakheshi's right to request judicial notice of this same document at a later stage if she so desires.

5 **MOTIONS TO DISMISS (ECF NOS. 9, 24, 40)**

6 **I. Applicable Law**

7 Federal Rule of Civil Procedure 12(b)(6) allows an attack on the pleadings for “failure to
 8 state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to
 9 dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 10 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
 11 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff
 12 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 13 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

14 The determination of whether a complaint satisfies the plausibility standard is a “context-
 15 specific task that requires the reviewing court to draw on its judicial experience and common sense.”
 16 *Id.* at 679. Generally, a court must accept the factual allegations in the pleadings as true and view
 17 them in the light most favorable to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir.
 18 2017); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is “not bound to
 19 accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting
 20 *Twombly*, 550 U.S. at 555).

21 As a general rule, leave to amend a dismissed complaint should be freely granted unless it is
 22 clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St.*
 23 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

24 **II. Discussion**

25 **A. Garnica has failed to state a Section 1983 claim against Bakheshi for violation of the
 26 Fourteenth Amendment because she has failed to allege that Bakheshi acted under
 27 color of law (first and fourth causes of action).**

28 In order to prevail on a Section 1983 claim, the plaintiff must show, among other elements,
 that the defendant was “acting under color of state law” when the defendant engaged in the alleged

1 conduct. *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Garnica has not alleged facts
 2 sufficient to show this for Bakheshi.

3 Bakheshi's involvement in the events alleged was solely as an attorney representing
 4 Zeichick. *See* Compl. ¶ 59. Garnica alleges that Bakheshi's actions in this hearing "delayed the trial
 5 and cost Jennifer money not to mention precious time with PRG." *Id.*

6 Although the Court is unaware of any binding authority concerning the question of whether
 7 an attorney can be said to have "acted under color of state law" when representing one parent in a
 8 dependency proceeding, the Court finds that the Supreme Court jurisprudence regarding a court-
 9 appointed public defender is instructive. The Supreme Court has held that "a public defender does
 10 not act under color of state law when performing a lawyer's traditional functions as counsel to a
 11 defendant in a criminal proceeding." *Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981). Public
 12 defenders may be acting under color of law when they act in capacities beyond a lawyer's traditional
 13 functions, such as "making hiring and firing decisions," performing administrative functions, or
 14 other inappropriate behavior such as extorting money from clients' families. *See id.* But when a
 15 lawyer advocates for a client in a traditional lawyer's role, the lawyer is not acting under color of
 16 state law, regardless of whether the lawyer is an employee of the state. *See id.*

17 Similarly, because Bakheshi played a traditional lawyer's role representing the interests of a
 18 non-state party in court, this Court finds that Bakheshi was not acting under color of law.

19 Garnica appears to concede in her Opposition that this general rule is correct but argues that
 20 an exception applies because Garnica alleged a conspiracy between Bakheshi and state actors. *See*
 21 Opp'n at 22–23. Garnica cites *Radcliffe v. Rainbow Construction*, which Garnica argues stands for
 22 the proposition that "where [a] private actor conspires or enters into joint action with a state actor,"
 23 "a private actor may be held liable under Section 1983." Opp'n at 22–23 (citing *Radcliffe v. Rainbow*
 24 *Const. Co.*, 254 F.3d 772, 783 (9th Cir. 2001)). But as *Radcliffe* makes clear, evidence is required to
 25 support such a finding. *See id.* at 784 (affirming summary judgment for defendants, who were non-
 26 state actors allegedly acting in conspiracy with state actors, where no "evidence of agreement and
 27 concerted action was presented in the case before us."). A finding of a Section 1983 conspiracy
 28

1 requires evidence of “an agreement or meeting of the minds to violate constitutional rights.” *Id.* at
 2 783.

3 Here, Garnica has not alleged any facts that would support a finding of a conspiracy between
 4 Bakheshi and any other defendant. Only one paragraph of the Complaint contains any factual
 5 allegations regarding Bakheshi—paragraph 59, which alleges Bakheshi’s role in the December 16,
 6 2020, custody hearing. *See Compl. ¶ 59.* Neither this paragraph nor the remainder of the Complaint
 7 contain any allegation that any other Defendant played a role in this hearing, or ever communicated
 8 with Bakheshi. Garnica points to several paragraphs where she alleges conclusory that “Defendants”
 9 (without detail on which Defendants) “conspired together to commit all of the acts and/or omissions
 10 alleged herein.” *See Compl. ¶ 28; see also Compl. ¶¶ 51, 68, 77, 81, 83, 99* (similar). A court is “not
 11 bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678
 12 Such conclusory and non-specific allegations are not sufficient to support a finding of a meeting of
 13 the minds to violate constitutional rights.

14 For this reason, Bakheshi’s Motion (ECF No. 40) will be GRANTED as to the first and
 15 fourth causes of action. Garnica will be granted leave to amend her Section 1983 claims against
 16 Bakheshi, as further facts might be sufficient to show a conspiracy with state actors or that Bakheshi
 17 was acting under color of law.⁸

18 The Court need not reach Bakheshi’s other arguments as to the Section 1983 claims.⁹ If
 19 further facts are pleaded against Bakheshi, the Court will analyze Bakheshi’s other arguments in the
 20 context of those further facts.

21
 22 ⁸ Bakheshi argued in the hearing that this cause of action should be dismissed without leave to amend,
 23 because it is unlikely that further allegations could overcome Bakheshi’s arguments, particularly on litigation
 24 privilege. The Court will nevertheless grant leave to amend, given the liberal standard for leave to amend, and
 25 will evaluate any further allegations once they are made. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*,
 26 519 F.3d at 1031.

27 ⁹ Bakheshi argues that this Court would not have subject matter jurisdiction over any of the state claims
 28 against Bakheshi if the Section 1983 claims against Bakheshi are dismissed. Bakheshi Mot. at 10-11. To the
 extent that Bakheshi is requesting that the Court decline to assert supplemental jurisdiction over any state
 claims in light of the dismissal of the federal claims, this request is denied as it appears clear that all of the
 allegations—state and federal, against the various Defendants—arise from the same nucleus of operative
 facts. *See 28 U.S.C. § 1367(a)* (“in any civil action of which the district courts have original jurisdiction, the

1 **B. The County cannot be vicariously liable under Section 1983 (first and fourth causes
2 of action).**

3 The County argues that it cannot be vicariously liable under Section 1983 for the conduct of
4 its employees. *See* County Mot. at 9–10 (citing *Monell v. Dept. of Soc. Serv. of City of New York*,
5 436 U.S. 658, 690–91. Garnica concedes this point. *See* Opp’n at 24. Thus, the Section 1983 claims
6 against the County fail, and the Court need only decide whether these causes of action state a claim
7 against other Defendants. The Court will separately analyze whether the fifth and sixth claims—also
8 brought against the County, and not based on Section 1983—sufficiently state claims.

9 **C. The statute of limitations does not bar claims against Lara, Torrez, and Casillas
10 (first and fourth causes of action).**

11 The County Defendants argue that the statute of limitations bars all Section 1983 claims
12 against Lara, Torrez, and Casillas. *See* County Mot. at 8–9. This argument fails.

13 The statute of limitations for a Section 1983 claim is “is the personal injury statute of
14 limitations of the state in which the cause of action arose.” *Alameda Books, Inc. v. City of Los
15 Angeles*, 631 F.3d 1031, 1041 (9th Cir. 2011). The statute of limitations for personal injury actions
16 in California is two years. *See* Cal. Civ. Proc. Code § 335.1. The time begins running on the date of
17 injury, except in cases where the plaintiff is not aware of the injury or its cause until some later date.
18 *Ward v. Westinghouse Canada, Inc.*, 32 F.3d 1405, 1407 (9th Cir. 1994)

19 Here, Garnica filed suit on July 19, 2022, so the suit would not be timely if the time began
20 running prior to July 19, 2020. The County Defendants argue that all alleged wrongdoing by Lara,
21 Torrez, and Casillas occurred prior to July 19, 2020 (and in fact prior to March 30, 2020). *See*
22 County Mot. at 9. However, the time does not begin to run at the time of wrongdoing, it begins
23 running at the time of injury. *See Ward*, 32 F.3d at 1407. According to the Complaint, PRG was sent
24 to foster care on July 20, 2020. *See* Compl. ¶ 47. Later, Zeichick received custody of PRG on

25
26
27 district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the
28 action within such original jurisdiction that they form part of the same case or controversy under Article III”);
28 U.S.C. § 1337(c) (court “may” decline to exercise supplemental jurisdiction if the court “has dismissed all
claims over which it has original jurisdiction”).

1 November 8, 2020, and Garnica received only monitored visits. *See id.* ¶ 62. Drawing all inferences
 2 in favor of Garnica, these injuries are traceable to Lara's, Torrez's, and Casillas's alleged conduct.
 3 Because these injuries occurred after July 19, 2020, Garnica's claims—which, as discussed, are
 4 based on these injuries—are therefore not barred by the statute of limitations. Garnica also argues
 5 that she is suffering an ongoing injury. *See Opp'n at 23.* The Court need not reach this issue, having
 6 found that regardless of whether the injury is ongoing, it occurred within the period allowed by the
 7 statute of limitations.

8 **D. Garnica has adequately pleaded a claim against some Defendants under Section
 9 1983 for violation of the right to familial association under the Fourteenth
 Amendment (first and fourth causes of action).**

10 Turning to the other Defendants, Garnica's first cause of action is a Section 1983 claim for
 11 violations of the Fourteenth Amendment and the right to familial association, based on deception in
 12 presentation of evidence and unwarranted seizure of a child. *See Compl.* ¶¶ 65–73. Similarly,
 13 Garnica's fourth cause of is a Section 1983 claim for violation of civil rights based on deception in
 14 presentation of evidence and unwarranted seizure of a child against all Defendants (*see Compl.* ¶¶
 15 96–104). The Court will analyze these two related causes of action together.¹⁰ Taking her
 16 allegations as true, Garnica has stated claims under both causes of action against Lara, Casillas,
 17 Torrez, Fontes, Asatryan, Vuksanovic, and Morris, for the reasons described below.

18 “To prevail on a [Section] 1983 claim of deliberate fabrication, a plaintiff must prove that (1)
 19 the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the
 20 plaintiff's deprivation of liberty.” *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017). Custody of
 21 one's children is a liberty interest, which, if deprived, would be sufficient for the second prong of
 22 this test. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous
 23 occasions that the relationship between parent and child is constitutionally protected.”). Here,
 24 Garnica made allegations that state a claim within the *Spencer* framework.

25
 26
 27 ¹⁰ These claims are functionally identical. The only significant difference is that the first cause of action
 28 specifically points to the Fourteenth Amendment, while the fourth cause of action describes violations of
 unspecified civil rights. *See Compl.* at pp. 15, 22. Both are claims under Section 1983, and both are based on
 “Deception in the Presentation of Evidence and/or Unwarranted Seizure of a Child.” *See id.*

1 First, Garnica made allegations which, if taken as true, are sufficient to show that DCFS
 2 officials had a motive to fabricate evidence. For instance, Torrez allegedly told Garnica that that
 3 “everyone in [Torrez’s] office” “agrees” that Garnica had coached PRG. Compl. ¶ 43. Later, a
 4 district attorney, not alleged to be part of DCFS but alleged to have some insight into DCFS’s
 5 attitude towards the case, allegedly stated that “All DCFS doesn’t want [Garnica] to have visitation.”
 6 Compl. ¶ 54. These allegations suggest that DCFS officials were attempting to deprive Garnica of
 7 custody of PRG. While these allegations alone do not show any fabrication of evidence, they are
 8 relevant to interpreting whether other allegedly false evidence was a deliberate fabrication.

9 Second, Garnica alleged that many DCFS officials fabricated evidence against Garnica,
 10 either by lying, omitting key facts, or otherwise deliberately undermined Garnica’s evidence. When
 11 PRG allegedly reported that Zeichick had guns and intended to harm Garnica, Lara allegedly was
 12 aggressive to Garnica, and then allegedly “discredited PRG reporting about the guns” at Zeichick’s
 13 bail hearing. *See id.* ¶¶ 34–37. When Casillas interviewed PRG and PRG allegedly again reported
 14 that Zeichick had guns, Casillas allegedly did not take this evidence seriously or act upon it, and
 15 allegedly instead accused Garnica of coaching PRG. *See id.* ¶ 39. After a forensic investigator
 16 interviewed PRG, Torrez allegedly misrepresented what PRG said in the interview, and allegedly
 17 claimed falsely that Garnica had refused to take PRG to the interview. *See id.* ¶ 44. McDonald
 18 allegedly stated falsely in a report that no suitable guardian was available for PRG. *See id.* ¶ 47.
 19 Ramirez allegedly signed this false report. *See id.* ¶ 21. McDonald allegedly falsely reported what
 20 occurred in a conversation with PRG’s foster mother. *Id.* ¶ 48. After many people, including PRG’s
 21 therapist, allegedly informed Defendants of abuse, Defendants allegedly omitted this information
 22 from reports. *See id.* ¶¶ 52–54. Fontes, Asatryan, Vuksanovic, and Morris were assigned to
 23 reinvestigate the situation, and instead of conducting a neutral reinvestigation, they allegedly
 24 communicated with Lara, Casillas, and Torrez, allegedly relied on false statements by Lara, Casillas,
 25 and Torrez, and allegedly added further false statements of their own. *See id.* ¶¶ 56–57. Drawing all
 26 inferences in favor of Garnica, these specific factual allegations are sufficient to state a claim that the
 27 Defendants named above fabricated evidence. The pattern of behavior and evidence of motivation to
 28

1 lie make the allegations plausible at this stage. *See Iqbal*, 556 U.S. at 678 (describing plausibility
 2 standard).

3 Third, the fabricated evidence caused allegedly Garnica to lose custody of PRG and
 4 otherwise affected the disposition of various court proceedings. PRG was allegedly sent to foster
 5 care and then to Zeichick, and Garnica alleges that this was as a result of the evidentiary record that
 6 Defendants created. *See id.* ¶¶ 47, 62. This deprived Garnica of a protected interest—her relationship
 7 with her child. *See Quilloin*, 434 U.S. at 255.

8 To prevail on her claims, Garnica will eventually need to show that her allegations of
 9 fabricated evidence are true, and that this purportedly fabricated evidence was the cause of the
 10 custody decisions. But at this stage, drawing all inferences in favor of Garnica, she had stated a
 11 claim against at least certain defendants.

12 The Court finds that Garnica has stated a claim against all of the Defendants described
 13 above—Lara, Casillas, Torrez, McDonald, Ramirez, Fontes, Asatryan, Vuksanovic, and Morris. The
 14 County Motion will be denied as to the first and fourth causes of action for these Defendants.

15 However, Garnica has not stated a claim under these causes of action against the other
 16 remaining Defendants—Rampley, Hill, Guerrero, Marin, Fithyan, McTighe, and Guerrero. The only
 17 alleged involvement of Marin, Fithyan, and McTighe¹¹ is that Garnica allegedly emailed complaints
 18 to them, and although Garnica alleges that these three ratified others' behavior, she alleges no facts
 19 to support this legal conclusion. *See Compl. ¶ 51; see also Iqbal*, 556 U.S. at 678 (A court is “not
 20 bound to accept as true a legal conclusion couched as a factual allegation.”). Hill, Guerrero, and
 21 Rampley¹² are not alleged to have fabricated any evidence or been involved in fabrication. *See*
 22 *Compl.* To the extent that Garnica seeks to use allegations of conspiracy to support claims against
 23

24
 25 ¹¹ McTighe is also alleged to have “relied on” false reports by others, but there is no allegation that he knew
 26 they were false. *See Compl. ¶ 47.* His reliance on these reports occurred in July 2020, prior to when Garnica
 27 emailed him in August 2020. *See id.* ¶¶ 47, 51.

28 ¹² Garnica alleges that Rampley falsified documents stating that Rampley was a licensed social worker when
 29 she was not but does not allege any specific falsehoods by Rampley about Garnica or PRG that caused
 Garnica harm. *See Compl. ¶ 61.*

1 these Defendants, she has not alleged sufficient facts that would support a finding “an agreement or
 2 meeting of the minds to violate constitutional rights” as required. *Radcliffe*, 254 F.3d at 783.

3 In sum, the County Motion is GRANTED as to the first and fourth causes of action for the
 4 County, Rampley, Hill, Marin, Fithyan, and McTighe. Guerrero’s Motion is GRANTED as to the
 5 first and fourth causes of action. Garnica will have leave to amend her allegations against these
 6 Defendants, as further allegations might state a claim. The County Motion is DENIED as to the first
 7 and fourth causes of action for Lara, Casillas, Torrez, McDonald, Ramirez, Fontes, Asatryan,
 8 Vuksanovic, and Morris.

9 **E. Garnica has failed to adequately state a claim for retaliation in violation of the First
 10 Amendment (second cause of action).**

11 Garnica’s second cause of action is a Section 1983 claim for retaliation in violation of the
 12 First Amendment and violations of the right to familial association against Lara, Casillas, Torrez,
 13 Rampley, Asatryan, Vuksanovic, Fontes, Hill, Morris, and Guerrero. *See Compl. ¶¶ 74–86*. To
 14 allege a First Amendment retaliation claim, Garnica must allege that: “(1) [she] was engaged in a
 15 constitutionally protected activity, (2) the defendant’s actions would chill a person of ordinary
 16 firmness from continuing to engage in the protected activity and (3) the protected activity was a
 17 substantial or motivating factor in the defendant’s conduct.” *Capp v. Cnty. of San Diego*, 940 F.3d
 18 1046, 1053 (9th Cir. 2019). Garnica fails, at minimum, on the third prong.

19 Although Garnica alleges that she engaged in certain protected activity—including filing a
 20 police report and complaining to supervisors (*see Compl. ¶¶ 37, 51*)—and has alleged that her
 21 protected activity was a motivating factor for Defendants’ actions (see Compl. 79), but the allegation
 22 that her activity was a “motivating factor” is conclusory. And the Complaint does not set forth a
 23 clear chronology that would permit this Court to draw an inference—even at this stage—of
 24 retaliation. Importantly, the Complaint does not allege any change in behavior *following* the
 25 protected activity. It fails to identify what complaints led to what retaliation and how. Accordingly,
 26 this claim fails. *See Capp*, 940 F.3d at 1053.

27 Garnica will be granted leave to amend, as further allegations might properly state a claim.
 28

1 **F. Garnica fails to adequately state a claim for violation of the constitutional right to**
 2 **remain free of non-consensual medical examinations against Lara, Torrez, Casillas,**
 3 **Fontes, or Guerrero (third cause of action).**

4 Garnica's third cause of action is a claim for deprivation of constitutional rights based on
 5 non-consensual and unwarranted medical examinations against Lara, Casillas, Torrez, Rampley,
 6 Asatryan, Vuksanovic, Fontes, Hill, Morris, and Guerrero. *See* Compl. ¶¶ 87–95. The County
 7 Defendants argue that this claim fails against Lara, Torrez, Casillas, and Fontes, but do not raise
 8 specific arguments regarding the other County Defendants (except general arguments under Rule 8,
 9 which will be addressed separately). *See* County Mot. at 15–16; County Reply at 10–11. Guerrero
 10 also argues that this claim fails against her. *See* Guerrero Mot. at 15–16.

11 “The right to family association includes the right of parents to make important medical
 12 decisions for their children, and of children to have those decisions made by their parents rather than
 13 the state.” *Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1161 (9th Cir. 2018). It is a violation of the
 14 constitution to perform medical examinations of a child “without notifying the parents about the
 15 examinations and without obtaining either the parents' consent or judicial authorization.” *Id.*

16 The only allegation regarding this claim is in paragraph 55¹³, which states that Morris,
 17 Rampley, Vuksanovic, Asatryan, Hill, and McDonald subjected PRG to unwarranted examinations.
 18 *See* Compl. ¶ 55. There are no allegations supporting a claim against Lara, Torrez, Casillas, Fontes
 19 or Guerrero. Accordingly, this claim fails against Lara, Torrez, Casillas, Fontes, and Guerrero.¹⁴
 20 Because the County Defendants have not argued that this claim falls short against Rampley,
 21 Asatryan, Vuksanovic, Hill, and Morris, the Court finds that this cause of action states a claim
 22 against those Defendants.

23 Accordingly, the County Motion is GRANTED as to the third cause of action for Lara,
 24 Torrez, Casillas, and Fontes, and Guerrero's Motion is GRANTED as to the third cause of action.

25 ¹³ Paragraph 140 adds some detail on what medical procedures the County generally performs, but does not
 26 add detail on which, if any, Defendant performed these procedures on PRG. *See* Compl. ¶ 140.

27 ¹⁴ Having found that all claims against Guerrero—the first, second, third, and fourth—will be dismissed, the
 28 Court need not reach Guerrero's other arguments. *See* Guerrero Mot. If further facts are alleged against
 29 Guerrero, the Court will analyze Guerrero's arguments against those specific facts but cannot do so without
 30 first seeing the further facts.

1 The County Motion is otherwise DENIED as to the third cause of action. Garnica will be granted
 2 leave to amend, as further facts might state a claim against Lara, Torrez, Casillas, Fontes, and
 3 Guerrero.

4 **G. Garnica's claims are adequately pleaded under Rule 8.**

5 The County Defendants argue that Garnica's Complaint is a confusing "shotgun pleading"
 6 which does not give sufficient notice under Federal Rule of Civil Procedure 8. *See* County Mot. at
 7 3–6. This argument fails.

8 Federal Rule of Civil Procedure 8 ("Rule 8") requires that a complaint contain "a short and
 9 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
 10 The complaint should "give the defendant fair notice of what the claim is and the grounds upon
 11 which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Where a plaintiff drafted a complaint
 12 without an attorney, as here, the complaint should be "liberally construed" and "must be held to less
 13 stringent standards than formal pleadings drafted by lawyers." *Id.* at 94.

14 Having reviewed Garnica's Complaint, the Court finds that the Complaint gives the
 15 Defendants fair notice of what is alleged and the grounds on which Garnica is entitled to relief. This
 16 is particularly true given Garnica's *pro se* status at the time of filing. Although the County
 17 Defendants allege that the Complaint is "unintelligible," the Court finds that the Complaint is
 18 intelligible, especially in light of Garnica's *pro se* status at the time of filing. The Complaint will
 19 therefore not be dismissed on the basis that it is confusing or otherwise fails to comply with Rule 8.

20 **H. The County Defendants have not asserted any other basis for dismissing the *Monell*
 21 claim (fifth cause of action).**

22 Garnica's fifth cause of action is a Section 1983 claim and *Monell* claim for a custom and
 23 practice of deception in the presentation of evidence and retaliation by DCFS social workers against
 24 the County (including separate "counts" for "Judicia Deception," "Unwarranted Medical
 25 Examinations," and "Unwarranted Seizure"). The County moves to dismiss the Complaint as a
 26 whole but does not include any arguments specific to this cause of action. *See* County Mot.; County
 27 Reply. The Court reads the County Motion as only seeking dismissal of the fifth cause of action on
 28

1 the basis of Rule 8. Having rejected that argument, the Court sees no basis on which to dismiss the
 2 fifth cause of action.

3 For this reason, the County Motion is DENIED as to the fifth cause of action.

4 **I. The sixth cause of action will be dismissed as to all Defendants.**

5 Garnica's sixth cause of action is a Bane Act claim. The Complaint states that this claim is
 6 brought against only the County and against "All Defendants." *See* Compl. at 39. The Court will
 7 analyze it as if brought squarely against all Defendants for completeness.

8 The County Defendants move to dismiss this claim on two grounds: (1) that a Bane Act
 9 claim against the County is barred by the California Tort Claims Act because Garnica did not first
 10 file a claim for damages with the County; and (2) that the Complaint fails to state sufficient facts for
 11 liability against any other Defendant. *See* County Mot. at 17–19. Guerrero similarly argues that to
 12 the extent that this claim is brought against her, it fails for lack of sufficient facts. *See* Guerrero Mot.
 13 at 17. Bakheshi did not specifically address the sixth cause of action, but argued that all claims
 14 against her are barred by California's litigation privilege. *See* Bakheshi MPA at 7–8.

15 First, with respect to Bakheshi's argument of litigation privilege, Garnica argued that
 16 litigation privilege would not bar a Section 1983 claim but did not argue that a Bane Act claim
 17 would not be barred. *See* Opp'n at 20–21. The Court reads this as a concession that the Bane Act
 18 claim as currently pleaded is barred against Bakheshi. For this reason, the sixth cause of action will
 19 be dismissed against Bakheshi. Similarly, Garnica made no attempt to rebut the County's argument
 20 that this claim is barred against the County. *See* Opp'n. The sixth cause of action as pleaded will
 21 therefore be dismissed against the County.

22 Regarding the other Defendants, the Court finds that Garnica has not alleged sufficient facts
 23 to state a Bane Act claim. A Bane Act claim requires: "(1) intentional interference or attempted
 24 interference with a state or federal constitutional or legal right, and (2) the interference or attempted
 25 interference was by threats, intimidation or coercion." *Allen v. City of Sacramento*, 183 Cal. Rptr. 3d
 26 654, 676 (Cal. App. 2015). Although the Complaint as a whole alleges some facts that could support
 27 a finding of intentional interference with constitutional rights, the Bane Act claim does not identify
 28 what rights it is based on and what threats, intimidation, or coercion were allegedly applied. *See*

1 Compl. ¶ 160. Garnica's Opposition suggests that the fear of losing her child was used to chill
 2 Garnica in the exercise of her First Amendment right to complain about the Defendants, Opp'n at 19,
 3 this theory is not supported by the Complaint itself. *See* Compl at 39. Garnica's Opposition does not
 4 argue that any such facts were pleaded. *See* Opp'n. For this reason, the Bane Act claim will be
 5 dismissed.

6 The County Defendants' Motion, Guerrero's Motion, and Bakheshi's Motion will all be
 7 GRANTED as to the sixth cause of action. Leave to amend shall be granted, as further facts might
 8 state a claim, and might overcome the County's and Bakheshi's arguments by showing that Garnica
 9 did file a claim for damages with the County or that litigation privilege should not apply.

10 **CONCLUSION**

11 For the reasons stated herein, the Court Orders as follows:

- 12 1. Guerrero's Request for Judicial Notice (ECF No. 24-2) is GRANTED.
- 13 2. Bakheshi's Request for Judicial Notice (ECF No. 40-3) is DENIED.
- 14 3. Guerrero's Motion to Dismiss (ECF No. 24) is GRANTED as to all claims.
- 15 4. Bakheshi's Motion to Dismiss (ECF No. 40) is GRANTED as to all claims.
- 16 5. The County Defendants' Motion to Dismiss (ECF No. 9) is GRANTED IN PART:
 - 17 a. The first cause of action is dismissed against the County, Rampley, Hill, Guerrero,
 18 Marin, Fithyan, McTighe. The first cause of action survives against Lara, Casillas,
 19 Torrez, McDonald, Ramirez, Fontes, Asatryan, Vuksanovic, and Morris.¹⁵
 - 20 b. The second cause of action is dismissed against all County Defendants that it was
 21 brought against (Lara, Casillas, Torrez, Rampley, Asatryan, Vuksanovic, Fontes, Hill,
 22 and Morris).
 - 23 c. The third cause of action is dismissed against Lara, Torrez, Casillas, and Fontes. The
 24 third cause of action survives against Rampley, Asatryan, Vuksanovic, Hill, and
 25 Morris.

26
 27 ¹⁵ The first cause of action is also dismissed against Guerrero and Bakheshi, as described separately above.
 28 The same is true for other causes of action below—Guerrero and Bakheshi are not listed under No. 5 because
 they are discussed separately above.

- d. The fourth cause of action is dismissed against the County, Rampley, Hill, Marin, Fithyan, McTighe. The fourth cause of action survives against Lara, Casillas, Torrez, McDonald, Ramirez, Fontes, Asatryan, Vuksanovic, and Morris.
- e. The fifth cause of action survives against the County (the only Defendant it was brought against).
- f. The Sixth cause of action is dismissed against all County Defendants.

6. Garnica is GRANTED LEAVE TO AMEND all of her claims. If Garnica chooses to file an amended complaint, she must do so within thirty (30) days of the entry of this Order.

IT IS SO ORDERED.

Dated: October 10, 2023

MAAME EWUSI-MENSAH FRIMPONG

United States District Judge